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MICHAEL RODAK, JR., C

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1586

THE PEOPLE OF THE STATE OF ILLINOIS on the relation of ILLINOIS EDUCATION ASSOCIATION, an Illinois not for profit corporation, and JOSEPH PASTERIS, AL RABY, THOMAS BROWN, MAURICE CREW, NORMAND MADORE, IRVIN KING, VICTOR SELF, ANTOINETTE MINUZZO, CLARENCE BLAIR, DAVID CARTY, KATHRYN HULTGREN, JIM McQUIRTER, DORIS JUNE VAN SICKLE, ELAINE F. HARVEY, DAVID YOUKER, MARY WELLER, WARREN COVERT and RUTH BROOM, Individually and on Behalf of all other participants, members, annuitants and beneficiaries of the STATE UNIVERSITIES RETIREMENT SYSTEM, the TEACHERS' RETIREMENT SYSTEM OF THE STATE OF ILLINOIS, and the PUBLIC SCHOOL TEACHERS' AND PENSION RETIREMENT FUND OF CHICAGO,

Petitioners,

vs.

DANIEL WALKER, as Governor of the State of Illinois; GEORGE W. LINDBERG, as Comptroller of the State of Illinois; ALAN J. DIXON, is Treasurer of the State of Illinois; ELLIOT S. EPSTEIN, as Director of the Department of Finance of the State of Illinois; and HAROLD HOVEY, as Director of the Bureau of the Budget of the State of Illinois,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

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IN THE

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THE PEOPLE OF THE STATE OF ILLINOIS on the relation of ILLINOIS EDUCATION ASSOCIATION, an Illinois not for profit corporation, and JOSEPH PASTERIS, AL RABY, THOMAS BROWN, MAURICE CREW, NORMAND MADORE, IRVIN KING, VICTOR SELF, ANTOINETTE MINUZZO, CLARENCE BLAIR, DAVID CARTY, KATHRYN HULTGREN, JIM McQUIRTER, DORIS JUNE VAN SICKLE, ELAINE F. HARVEY, DAVID YOUKER, MARY WELLER, WARREN COVERT and RUTH BROOM, Individually and on Behalf of all other participants, members, annuitants and beneficiaries of the STATE UNIVERSITIES RETIREMENT SYSTEM, the TEACHERS' RETIREMENT SYSTEM OF THE STATE OF ILLINOIS, and the PUBLIC SCHOOL TEACHERS' AND PENSION RETIREMENT FUND OF CHICAGO,

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vs.

DANIEL WALKER, as Governor of the State of Illinois; GEORGE W. LINDBERG, as Comptroller of the State of Illinois; ALAN J. DIXON, as Treasurer of the State of Illinois; ELLIOT S. EPSTEIN, as Director of the Department of Finance of the State of Illinois; and HAROLD HOVEY, as Director of the Bureau of the Budget of the State of Illinois,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

The petitioners, The People of the State of Illinois on the relation of Illinois Education Association, an Illinois not for profit corporation, and Joseph Pasteris, Al Raby, Thomas Brown, Maurice Crew, Normand Madore, Irvin King, Victor Self,

Antoinette Minuzzo, Clarence Blair, David Carty, Kathryn Hultgren, Jim McQuirter, Doris June Van Sickle, Elaine F. Harvey, David Youker, Mary Weller, Warren Covert and Ruth Broom, Individually and on behalf of all other participants, members, annuitants and beneficiaries of the State Universities Retirement System, the Teachers' Retirement System of the State of Illinois, and the Public School Teachers' and Pension Retirement Fund of Chicago, pray that a Writ of Certiorari issue to review the order of the Supreme Court of Illinois entered January 23, 1974 denying their motion for leave to file a petition for an original writ of mandamus and for further relief in Case No. 46341.

OPINIONS BELOW.

The Supreme Court of Illinois rendered no opinion. Its order appears at Appendix A. The Court of Claims of the State of Illinois entered its unreported opinion on June 25, 1973. That opinion appears at Appendix B.

JURISDICTION.

The order of the Supreme Court of Illinois was entered on January 23, 1974 (Appendix A). This Petition for a Writ of Certiorari was filed less than 90 days from said date. The jurisdiction of this Court is invoked under Rule 19 of the Rules of the Supreme Court of the United States and 28 U. S. C. 1257(3) which provide for review of final judgments rendered by the highest court of a State by Writ of Certiorari "where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under the United States."

QUESTION PRESENTED.

The question presented is:

Whether the denial of petitioners' motion for leave to file original petition for mandamus and other relief by the

Supreme Court of Illinois violates the due process clause of the Fourteenth Amendment to the Constitution of the United States.

PERTINENT CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.

The texts of the pertinent constitutional, statutory and regulatory provisions involved herein are contained in Appendix C. The pertinent provisions are:

1. The Fourteenth Amendment of the Constitution of the United States.
2. Article I, Section 12 of the Constitution of the State of Illinois.
3. Article VI, Section 4(a) of the Constitution of the State of Illinois.
4. Article XIII, Section 5 of the Constitution of the State of Illinois.
5. Illinois Revised Statutes, Chapter 37, Section 439.8.
6. Illinois Revised Statutes, Chapter 108½, Section 15-155.
7. Illinois Revised Statutes, Chapter 108½, Section 15-156.
8. Illinois Revised Statutes, Chapter 108½, Section 16-153.
9. Illinois Revised Statutes, Chapter 108½, Section 16-158.
10. Illinois Revised Statutes, Chapter 108½, Section 16-159.
11. Illinois Revised Statutes, Chapter 108½, Section 16-160.
12. Illinois Revised Statutes, Chapter 108½, Section 16-161.
13. Illinois Revised Statutes, Chapter 108½, Section 16-187.

STATEMENT OF FACTS.

On September 12, 1972 the petitioners filed their petition in the Court of Claims of the State of Illinois, pursuant to Illinois Revised Statutes, Chapter 37, Section 439.8 (Appendix C) which vests exclusive jurisdiction in said court over such matters as hereinafter set forth, alleging, *inter alia*, that the State of Illinois had, in violation of the Illinois and United States Constitutions and certain statutes enacted pursuant thereto, underfunded the State Universities Retirement System, the Teacher Retirement System of the State of Illinois, and the Public School Teacher's and Pension Retirement Fund of Chicago (hereinafter collectively referred to as "Trusts").

On June 25, 1973 the Court of Claims issued its Opinion (Appendix B), which provided *inter alia:*

> It is the opinion of this court that the members, annuitants, and beneficiaries of the Teachers Retirement System of the State of Illinois, and the State Universities Retirement System are parties to a constitutional and statutory contract with the State of Illinois; that the 1970 Constitution describes their rights thereunder as enforceable, and that the State of Illinois has failed to meet its statutory obligations, regarding its indebtedness to these two funds as follows:

Teacher Retirement System of the State of Illinois

1.	Due as of June 30, 1971:	$1,748,375,624.00
2.	Due as of June 30, 1972:	88,179,200.00
3.	Due as of June 30, 1973:	105,820,000.00
4.	Due for Fiscal Year 1974:	205,600,000.00
		$2,147,974,824.00

State Universities Retirement System

1.	Due as of August 31, 1971:	$311,336,000.00
2.	Due as of August 31, 1972:	90,085,722.00
3.	Due as of August 31, 1973:	53,065,507.00
4.	Due for Fiscal Year 1974:	55,882,691.00
		$510,369,920.00

> Finally, we take judicial notice of the fact that there are now bills pending in the General Assembly which appropriate monies to the Teacher Retirement System as suggested in the stipulation filed herein on March 2, 1973.

On or about June 25, 1973 the state legislature of the State of Illinois appropriated current funding for fiscal year in 1974 in the amount of $205,600,000 for the Teachers Retirement System and $54,759,100 for the State Universities Retirement System. The legislature also appropriated funds for past funding deficiencies in the amount of $39,817,492.48 for the Teachers Retirement System and $12,138,599.00 for the State Universities Retirement System. Additional amounts were appropriated for the Public School Teachers and Pension Fund of Chicago. The aforesaid appropriations for past funding deficiencies reflected a fifty year amortization (as stipulated to by the Attorney General of Illinois and acknowledged as actuarially sound by the Court of Claim in that proceeding) and if continued for that period would have compensated for the entire two billion six hundred million dollar deficit.

Respondent Daniel Walker, as Governor of the State of Illinois, vetoed the aforesaid past funding appropriations in their entirety as well as partially vetoing the current appropriations, thereby increasing the past unfunded deficiency. These vetoes were effected despite statements, on or about September 19, 1973, by the respondent George W. Lindberg, as Comptroller of the State of Illinois, and the respondent Harold Hovey, as Director of the Bureau of the Budget of the State of Illinois, that the State of Illinois had surplus revenues and a substantial general fund balance at the end of the fiscal year 1973. On or about November 7, 1973 attempts to override the vetoes failed.

On December 7, 1973, petitioners filed in the Supreme Court their Motion for Leave to File Original Petition for Mandamus and other Relief pursuant to Article VI, Section 4 of the Constitution of the State of Illinois (Appendix C). Filed contemporaneously therewith and made a part thereof by reference

was petitioners' Original Petition for Mandamus and Other Relief wherein the aforesaid vetoes were challenged. On January 23, 1974 the Supreme Court of Illinois entered its order denying petitioners' motion, from which order the present petition for a Writ of Certiorari is taken.

PRESENTATION OF THE FEDERAL QUESTION.

The federal question arose with the denial of the petitioners' Motion for Leave to File Petition for Mandamus and Other Relief by the Supreme Court of Illinois on January 23, 1974, this denial being self-evidently unappealable within the courts of the State of Illinois. The federal question, specifically the deprivation to the petitioners of their right to due process as guaranteed by the Fourteenth Amendment of the Constitution of the United States, is raised for the first time in this petition for a Writ of Certiorari.

REASONS WHY THE WRIT SHOULD BE GRANTED.

Article I, Section 12 of the new constitution of the State of Illinois provides:

> "Every person shall find a certain remedy in the laws for all injuries and wrongs which he receives to his person, privacy, property or reputation. He shall obtain justice by law freely, completely and promptly."

Clearly the interest of this section is to provide an opportunity for redress where a wrong has been engendered. In the instant case, a wrong has been found by each branch of the government of the State of Illinois and yet an opportunity for redress—a hearing before and consideration by the Supreme Court of Illinois—has been denied to the petitioners herein.

The Illinois Court of Claims, vested with exclusive jurisdiction over claims against the State, *Ill. Rev. Stats.* Ch. 37, Sec. 439.8, expressly held that the State Universities Retirement

System, *Ill. Rev. Stats.* Ch. 108½, secs. 15-155, 15-156, and the Teachers' Retirement System, *Ill. Rev. Stats.*, Ch. 108½, secs. 16-153, 16-158, 16-159, 16-160, 16-161, 16-187, along With Article XIII, Section 5 of the Constitution of the State of Illinois, created binding contractual obligations upon the State which had not been met by virtue of significant underfunding of these systems. This finding was in accord with a stipulation entered into by the Attorney General of Illinois, the highest legal officer of the State's executive branch. Moreover, the State Legislature appropriated monies to compensate for the underfunding precisely on the terms stipulated and recognized by the Court of Claims in its opinion. Yet, by reason of vetoes by the respondent Daniel Walker, as Governor of the State of Illinois, this certain deprivation and impairment to the property of the beneficiaries of the systems has not been rectified. When petitioners sought to have this situation corrected by going before the Supreme Court of Illinois with an original petition for mandamus and other relief as authorized by Article VI, Section 4(a) of the Constitution of the State of Illinois they were denied a hearing and consideration. Such a result is a clear violation of the Fourteenth Amendment of the Constitution of the United States.

Petitioners herein do not suggest that the Supreme Court of the United States ought to order the Supreme Court of Illinois to issue mandamus. Petitioners only respectfully request this Court to require a hearing to be held and that the matter be considered by the Supreme Court of Illinois, as mandated by the Fourteenth Amendment of the Constitution of the United States, so that the Supreme Court of Illinois may determine what action is in consonance with the statutes of Illinois and the Constitutions of the State of Illinois and the United States.

The order of the Supreme Court of Illinois dismissing petitioners' motion has the following effect: it deprives the petitioners of a clearly established property right without a hearing having been held to determine whether or not such a deprivation

is justified by law or policy. Such a determination has been significantly and determinatively held a violation of procedural due process by this Court. As stated in *Fuentes* v. *Shevin*, 407 U. S. 67, 32 L. Ed 2d 556, 92 S. Ct. 1983 (1972):

> "The right to a prior hearing has long been recognized by this Court under the Fourteenth and Fifth Amendments. Although the Court has held that due process tolerates variances in the *form* of a hearing 'appropriate to the nature of the case', *Mullane* v. *Central Hanover Tr. Co.*, 339 U. S. 306, 313, and 'depending upon the importance of the interests involved and the nature of the subsequent proceedings (if any),' *Boddie* v. *Connecticut*, 401 U. S. 371, 378, the Court has traditionally insisted that, whatever its form, opportunity for that hearing must be provided before the deprivation at issue takes effect." (407 U. S. at 82).

Analyzed in the light of the foregoing construction, the order which is the subject of this petition is particularly disturbing. First, by Illinois law, the hearing requested by the petitioners is the only one "appropriate to the nature of the case." Second, a contract obligation involving funds to be provided for the retirement of thousands of employees eloquently speaks of "the importance of the interests involved."

In many respects, the case at bar is analogous to that of *Goldberg* v. *Kelly*, 397 U. S. 254, 25 L. Ed 2d 287, 90 S. Ct. 1011 (1970). There, this Court held that where a person is qualified for welfare benefits those benefits become a statutory entitlement which cannot be terminated without the protections of procedural due process. Here, the pension benefits involved have been determined by the Illinois Court of Claims to be both a statutory and constitutional entitlement to the petitioners herein. If the order of the Supreme Court of Illinois is allowed to stand, the benefits will be significantly terminated absent the hearing which procedural due process demands. This Court should not countenance such an occurrence. To do so would override the traditional view expressed by this Court that con-

tract obligations of a governmental body are subject to due process protections.

The aforementioned principle was well-stated by Justice Brandeis in *Lynch* v. *United States*, 292 U. S. 571, 78 L. Ed. 1434, 54 S. Ct. 840 (1934), wherein this Court considered an act of Congress seeking to extinguish the government's liability on War Risk Insurance policies. Citing *Union Pacific Railroad Company* v. *United States*, 99 U. S. 700, 25 L. Ed. 496 (1879), Justice Brandeis wrote:

> "The Fifth Amendment commands that property be not taken without making just compensation. Valid contracts are property, whether the obligation be a private individual, a municipality, a State or the United States. Rights against the United States arising out of a contract with it are protected by the Fifth Amendment.
>
> * * * * *
>
> 'Congress was free to reduce gratuities deemed excessive. But Congress was without power to reduce expenditures by abrogating contractual obligations of the United States. To abrogate contracts, in the attempt to lessen government expenditure, would be not the practice of economy, but an act or repudiation." (292 U. S. 571, at 579, 580).

CONCLUSION.

Clearly this Court considers the contracts of a governmental body to be entitled to due process protection, and the contracts involved herein have already been determined to be statutory and constitutional contractual obligations. Hence, those procedures which this court has held to be generic to due process must be effected. The only method for accomplishing that result is the granting of this petition.

Respectfully submitted,

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APPENDIX A.

ORDER OF THE SUPREME COURT OF ILLINOIS

State of Illinois
Office of
CLERK OF THE SUPREME COURT
Springfield
62706

January 23, 1974

Mr. Lawrence Jay Weiner
Attorney at Law
7 South Dearborn Street
Chicago, Illinois 60603

Dear Mr. Weiner:

In Supreme Court today, in case No. 46341 entitled: People ex rel. Illinois Education Association, an Illinois not for profit corporation, et al., etc.,

Petitioners

vs.

Daniel Walker, as Governor of the State of Illinois; et al., etc.,

Respondents

motion by petitioners for leave to file a petition for an original writ of mandamus and for other relief was denied.

Very truly yours,
/s/ Justin Taft
Clerk of the Supreme Court

APPENDIX B.

OPINION OF THE COURT OF CLAIMS OF THE STATE OF ILLINOIS

IN THE COURT OF CLAIMS
of the
State of Illinois

ILLINOIS EDUCATION ASSOCIATION, ET AL.,
Claimants,
vs.
STATE OF ILLINOIS,
Respondent.

No. 6891

OPINION

Lawrence Jay Weiner, of Chicago, Attorney for the Claimants.

William J. Scott, Attorney General; (Saul R. Wexler, Assistant Attorney General, of counsel) for the Respondent.

Judge Burks delivered the opinion of the court:

This case was filed September 12, 1972, by the Illinois Education Association, an Illinois not-for-profit Corporation, and various named individuals, as individuals, and on behalf of all other participants, members, annuitants, and beneficiaries of three specific pension funds: (1) the Teachers Retirement System of the State of Illinois: (2) the State Universities Retirement System, and (3) the Public School Teachers Pension and Retirement Fund of Chicago.

Claimants' suit is based upon undisputed allegations that the State of Illinois, respondent, has failed to make its contributions to the aforesaid pension systems as required by law [Ill. Rev. Stat., 1971, Ch. 108½, § 15-100 et seq., § 16-101 et seq., and 17-101 et seq.]; and that such failure on the part of the respondent is a breach of the state's contractual obligations to the members and beneficiaries of the pension systems, said contractual obligations being established by statute and by the 1970 Illinois Constitution, Art. XIII, Sec. 5.

Claimants seek an order or decree from this court determining the state's liability as to their claim and rendering an award, or judgment, consistent with its findings.

The petition invokes the court's jurisdiction under Sections 8a and 8b of the Court of Claims Act, [Ill. Rev. Stat., Ch. 37, § 439.8a and b].

This case is one of first impression in Illinois. Hence we have deliberated cautiously and at length on the question of the jurisdiction of this court over the subject matter of this claim. At our request, both parties have favored us with exhaustive briefs on the question of jurisdiction. Oral argument was heard by the court en banc on March 2, 1973, primarily on the question of jurisdiction, a question on which we now express our comments and conclusion.

The legislature created this court and granted it exclusive jurisdiction to hear and determine all claims against the State of Illinois. As set forth in § 8 of the Court of Claim Act, the court's exclusive jurisdiction includes:

(a) All claims against the State founded upon any *law* of the State of Illinois . . . and

(b) All claims against the State founded upon any *contract* entered into with the State of Illinois.

Since this case is founded upon both (a) a law of this state and (b) an alleged contract with this state, the Court of Claims has exclusive jurisdiction *if* the case is, in fact, "a *claim* against

the State, cognizable by the court" as contemplated by the following § 23 of the Court of Claims Act:

> "It is the policy of the General Assembly to make no appropriation to pay any *claim against the State, cognizable by the court,* unless an award therefor has been made by the court." [Ill. Rev. Stat., Ch. 37 "Courts" § 439.23.] (Emphasis added.)

Is this a *claim* against the state within the meaning of the above § 23? If so, it differs from all other causes of action under our jurisdiction. In all other claims that have come before us, a claimant seeking a money judgment must prove actual damages measurable in financial loss.

For example, a claimant may be awarded damages for personal injuries caused by the state's negligence in maintaining a stop sign at a highway intersection. However, a citizen who merely sees the potential danger in a downed stop sign does not have a "claim" against the state unless he suffers some actual damage caused by that situation and proves that the state's negligence was the proximate cause of his financial loss.

In the case before us, the complaint does not charge that any teacher or member has ever suffered any financial damages or failed to receive full pension benefits as provided by law.

We first viewed the situation as being somewhat analogous to the federal Social Security System. Last year Congress abandoned all pretense of an "actuarially sound" trust fund for Social Security and provided that benefits would be financed by each year's social security tax from wage earners. Yet, as stated in a recent article by E. L. Dale, Jr., "No one's benefits —present or future—are in jeopardy. Social Security payments will stop only on the day that the U. S. government stops paying its bills."*

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* "Congress Gets a Grip on Social Security" by Edwin L. Dale, Jr., member of the New York Times Washington Bureau, Chicago Tribune, January 21, 1973. Sec. 2, page 1.

The court felt that the same conclusion would apply to any pension or retirement system created by the State of Illinois so far as the payment of all benefits is concerned. However, the power of the Congress to change the social security law is apparently without any such constitutional limitation as now seems to be imposed on the Illinois Legislature by our 1970 Constitution in Article XIII, § 5:

> "PENSION AND RETIREMENT RIGHTS
>
> Membership in any pension or retirement system of the State, any unit of local government or school district, or any agency or instrumentality thereof, shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired."

The above section was adopted by the *Sixth Illinois Constitutional Convention* on July 21, 1970. After reading the verbatum transcript of that Convention's debate on the adoption of this section, we must conclude that this constitutional mandate was intended to establish the enforceability of the contractual rights of the claimants in this action. The provision is much more explicit and affirmative than the general language of Art. I, Sec. 16, which merely forbids any law "impairing the obligation of contracts".

The same Article XIII of the 1970 Constitution which declares the claimants have *enforceable* contractual rights, also delegates to the legislature the authority to prescribe the manner and form in which claimants may seek to enforce their rights against the state by a court procedure. Article XIII, Sec. 4 (effective January 1, 1972) abolished sovereign immunity in this state "except as the General Assembly shall provide by law". The General Assembly responded by enacting P. A. 77-1776 (also effective January 1, 1972) which re-enacted the Court of Claims Act: (Ill. Rev. Stat., 1972 Supp., Ch. 127 § 801)

> "Except as provided in . . . [the Court of Claims Act] . . . the State of Illinois shall not be made a defendant or party in any court."

The legislature has thus declared that the only room door which is open to any claimant having a cause of action against the State of Illinois is the door of the Court of Claims. This conclusion was firmly supported by a recent decision of the Illinois Appellate Court in *Chicago Welfare Rights Org.* v. *Weaver,* 5 Ill. App. 3d (1972) 655. The Supreme Court of Illinois has previously upheld the exclusive jurisdiction of this court in certain causes of action against the state. Its most recent pronouncement is stated in *Edelen* v. *Hogsett,* 44 Ill. 2d (1970) 215.

It seems clear, therefore, that this court's jurisdiction has been properly invoked by the claimants in this case. The Attorney General confirms this in a brief filed on behalf of the respondent.

It seems equally clear that, since no other court, state or federal, has the requisite jurisdiction over this matter, this court must exercise its jurisdiction in this cause. Otherwise the claimants would be deprived of their constitutional rights under Article I, Sec. 12 of our 1970 Constitution which states that "every person *shall* find a certain remedy in the laws for all injuries and wrongs . . ." (The 1870 Bill of Rights counterpart merely stated that "every person *ought* to find a remedy in the law . . .") We turn then to such remedy as may be available to the claimants in this suit.

There are no significant issues of law or fact which are in dispute in this matter. At the time oral argument was heard by the court on March 2, 1973, the parties filed stipulations as to the state's unfunded statutory obligations to the Teachers and the Universities Retirement Systems. Still pending, and apparently unresolved by the parties hereto, is the status of the Chicago Teachers Fund. Accordingly, this opinion is confined to the Downstate and University Teachers Funds.

These obligations, founded upon statute, are clearly set forth in Ill. Rev. Stat., 1971, Ch. 108½:

Section 15-155 provides: *Employer contributions. The State of Illinois shall make contributions by biennial appropriations* of the amounts which, together with the other contributions of employers out of trust, federal, and other funds under their control, the contributions of the participating employees, income from investments, and other income of this system, will be necessary to meet the costs of maintaining and administering this System:

(1) the total amount of the employer contribution for any fiscal year shall be the sum of the amounts estimated to be required, on the basis of the actuarial tables adopted by the board and the prescribed rate of interest to meet the disability benefits, additional death benefits, the employers' portion of the cost of all annuities and survivors insurance benefits and expenses of administration expected to be paid during the year and to result in the accumulation of assets at the end of the year equal to the sum of the following:

(a) the liability for all annuities expected to be paid to the then annuitants, and the survivors insurance benefits expected to be paid;

(b) the liability for all accumulated additional, normal, and survivors insurance contributions of the then participants;

(c) the single premium reserve required for the employers' portion of the cost of all annuities which have then accrued because of previous earnings of the then participants;

(d) additional reserves which may reasonably be required because of variations in mortality, interest, and turnover experience.

In determining the employer contributions, the board shall include the amount which is required to amortize the cost of acquisition of land and the construction of an office building thereon over a period not exceeding 30 years, including interest at the rate of 6% per annum, less the estimated amount of rentals which may be received from the lease of surplus space in the building.

The contributions of employers from State appropriations for any fiscal year shall not be less than an amount

which is required to fund fully the current service costs in accordance with actuarial reserve requirements as prescribed in paragraph (1) of this Section, plus interest at the prescribed rate on the unfunded accrued liabilities.

If an employee is paid from trust or federal funds, the employer shall pay to the board contributions from these funds which are required to fund fully the current service costs in accordance with the actuarial reserve requirements as prescribed in paragraph (1) of this Section. Funds of the alumni associations, foundations, and athletic associations which are affiliated with the universities included as employers under this Article and other employers which do not receive State appropriations are considered as trust funds for the purpose of this Article.

(2) the total employer contribution shall be apportioned among the various funds of the State and other employers, whether trust, federal, or other funds, in accordance with actuarial procedures approved by the board.

The contributions of the State of Illinois for employers which receive appropriations from the State for personal services shall be payable from appropriations made to the employers. The contributions for Class I junior colleges shall be payable solely from appropriations to the Illinois Junior College Board for employer contributions. Class I junior colleges making employer contributions prior to the effective date of this amendatory Act of 1967 shall be reimbursed by the Illinois Junior College Board upon the filing of a claim for reimbursement in the manner prescribed by the Board. The Auditor of Public Accounts shall draw warrants payable to the treasurer of the system upon proper certification by the system, by the Illinois Junior College Board or by the employer in accordance with the laws making such appropriation.

Section 15-156 provides: *Obligations of state. The payment of (a) the required State contributions,* (b) all benefits granted under this system and (c) all expenses in connection with the administration and operation thereof *are obligations of the State of Illinois* to the extent specified in this Article.

Section 16-158 provides: *Contributions by state and other employing units. The State shall make contributions*

from the common school fund and other state funds to this system of the *amounts required to meet the obligations of the State* for the next fiscal year as provided in Sections 16-159 and 16-160. Such amounts shall be no less than 1.2 multiplied by members' contributions and be certified by the board to the Superintendent of Public Instruction and Auditor of Public Accounts.

If employees are paid from special trust or federal funds which are administered by the employing unit, whether school district or other unit, the employing unit shall pay to the retirement system from such funds the full accruing retirement costs based upon such service as determined by the Board of Trustees of the Teachers' Retirement System.

Section 16-162 provides: *Obligations of state. Payment of the required State contributions* and of all pensions, annuities, retirement allowances, death benefits, refunds and other benefits granted under or assumed by this retirement system, and all expenses in connection with the administration and operation thereof, *are obligations of the State*. [Emphasis supplied]

The meaning and intent of the above statute seems clear and unequivocal. The legislature has created a *de facto* contract between the state and the members of the pension funds, an "enforceable contractual relationship" according to Article XIII § 5 of the Illinois Constitution. The teachers, on their part, have performed their obligations thereunder to make contributions to the system from their salaries in specified amounts as required by § 16-152 and § 15-157 of the Acts. These contributions are automatically deducted from teachers salaries and are a condition of employment. The said contract remains executory on the part of the state.

Both parties to this action, in their briefs and oral arguments, agreed that this court cannot compel the legislature to make any appropriations. *Fergus* v. *Russell*, 277 Ill. 20 (1917). Nor, according to the briefs filed by the parties in this cause, could any other court force such action on the legislature by decision, injunction or mandamus. To do so, they have suggested, would

be violative of the doctrine of the separation of powers. We are reminded of a historic decision of the U. S. Supreme Court in 1832 which enraged President Andrew Jackson, *Worchester* v. *Georgia*, 6 Peters 561-63. The President is reported to have said, "John Marshall has made his decision:—*now let him enforce it!*"

As we have said, this case is one of first impression in Illinois. In the states of Washington, California, Arizona and Pennsylvania, we find cases similar to the matter before us in which the courts have ruled that public pension rights are contractually enforceable against municipalities. *Bakenhus* v. *Seattle*, 48 Wn. 2d 695, 296 2d 536 (1956); *State ex rel. Weaver* v. *Evans*, Supreme Court Cause No. 41851 (1972); *Allen* v. *Long Beach*, 45 Cal. (2d) 128 (1955); *Lyon* v. *Flournoy*, 76 Cal. Rep. 869 (1969); *Yeazell* v. *Copins*, 98 Ariz. 109 (1965); *Hickey* v. *Pittsburgh Pension Board*, 378 Pa. 300, 106 A. 2d 233, 52 ALR 2d 430 (1950).

Perhaps the leading case from other jurisdictions, and the only case we have noticed in which a writ of mandamus issued against a legislative body, was *Dombrowski* v. *City of Philadelphia*, 431 Pa. 199, 245 A. 2d 238 (1968).

In *Dombrowski* the Supreme Court of Pennsylvania affirmed the issuance of a writ of mandamus (under a liberal Mandamus Act* and where no Court of Claims existed) compelling the city to make appropriations to its retirement system assuring the actuarial soundness required by its Home Rule Charter. Citing a long line of Pennsylvania authority, the court noted that the entire theory of vested rights in public retirement benefits is a direct outgrowth of the contractual concept of pensions. The court went on to find that the realtors' contractual relationship with the city stemmed from a duty imposed by law, being the creation and administration of a retirement

* The Pennsylvania Mandamus Act provided (Section 3, 12 P. S. § 1914): "The writ of mandamus may issue upon the application of any person beneficially interested."

system, and that as a party to the contract he had standing to seek the writ (245 A. 2d 238, 245). That the failure of the city to provide contributions adequate to keep the retirement fund on an actuarially sound basis resulted in impairment of a contract obligation was clear:

> "In essence, then, Dombrowski was attempting to assure himself and all other members of the Philadelphia municipal retirement system that sufficient funds would be present to meet his and others' retirement payments. Part of his contract with the city was a promise made by the city, in its Home Rule Charter, that the retirement system would be actuarially sound. The court below found, a finding not here disputed, that the city had not kept its promise. *Dombrowski is thus suffering a present impairment of his contractual rights and thus and immediate injury.*" Id., 246-47 (emphasis supplied)

The court was not impressed with the suggestion that if in due course the relator did not receive his retirement benefits he would sue the city for breach of contract, enter judgment and execute upon city property, the duty to pay the pension being an obligation of the municipality. Nor was his injury by virtue of the failure to provide reserve funding deemed less immediate because there was a prospective future cause of action for breach. Concluding that the suit was properly brought in the individual capacity of the relator as a not yet retired member of the retirement system, the court held:

> "It is Dombrowski's contractual relationship with the city that is impaired by the city's failure to comply with its own Home Rule Charter and this immediate impairment supports his standings; that appellee might be able through judgment and execution to obtain the funds due him in 1972 does not prevent him from asserting in 1968 a present impairment of contractual rights." Id., 248.

This Pennsylvania case of *Dombrowski* could not be followed in Illinois for several obvious reasons. There is no procedure for mandamus against the state legislature, and certainly not in this court which has exclusive jurisdiction over the subject

matter of this claim. Although, as suggested in *Dombrowski*, there is a present impairment of claimant's contractual rights, claimants have shown no actual damages, measurable in dollars, which could be a reasonable basis for an award by this court. We recognize, of course, the desirability of full funding, accruing interest to accumulated reserves, and the avoidance of crushing future unfunded liabilities.

As previously stated, claimants' suit seeks an award by this court pursuant to § 23 of the Court of Claims Act. In so doing, they are employing and exhausting their statutory remedies, and fortifying their argument on the constitutional issues. Claimants may be mindful of the following statement by the Supreme Court in *Edelen* v. *Hogsett*, 44 Ill. 2d 215 (1969) at page 219:

> "Were it not for the existence of the Court of Claims Act, appellants' argument might be of some substance, but the existence of that legislation, modifying the State's immunity from suit, and the failure of the appellants to seek remedy thereunder, in our judgment renders their constitutional argument inappropriate and not cognizable by this court in the posture in which it is here presented."

We are impresed with the diligence of counsel for both sides in their effort to work out a practical solution to this difficult problem, and exhibiting, as they have, a sympathetic understanding of the impact of a payment for the full amount of the state's liability to the respective funds. As of this date the full amount apparently would be in excess of *two billion six hundred million dollars*. The parties have proposed to amortize said liability over a 50 year period. While the said proposal has been approved as actuarially sound, we cannot enter an award based thereon. We feel that the finding of this court must be in the nature of a declaratory judgment, pursuant to Sec. 57.1 of the Civil Practice Act, a declaration of claimants' rights as we see them, and leaving the amount of any consequential relief to the discretion of the legislature.

It is the opinion of this court that the members, annuitants, and beneficiaries of the Teachers Retirement System of the

State of Illinois, and of the State Universities Retirement System are parties to a constitutional and statutory contract with the State of Illinois; that the 1970 Constitution describes their rights thereunder as enforceable, and that the State of Illinois has failed to meet its statutory obligations regarding its indebtedness to these two funds as follows:

Teachers Retirement System of the State of Illinois

1. Due as of June 30, 1971:	$1,748,375,624.00
2. Due as of June 30, 1972:	88,179,200.00
3. Due as of June 30, 1973:	105,820,000.00
4. Due for Fiscal Year 1974:	205,600,000.00
	$2,147,974,824.00

State Universities Retirement System

1. Due as of August 31, 1971:	$ 311,336,000.00
2. Due as of August 31, 1972:	90,085,722.00
3. Due as of August 31, 1973:	53,065,507.00
4. Due for Fiscal Year 1974:	55,882,691.00
	$ 510,369,920.00

Finally, we take judicial notice of the fact that there are now bills pending in the General Assembly which appropriate monies to the Teachers Retirement System as suggested in the stipulation filed herein on March 2, 1973. We also take notice of published reports to the effect that the Governor has now proposed a full scale examination of all public pension programs with a view toward eventually working out an equitable approach.

ENTER:

/s/ Marion E. Burkes
Judge, Illinois Court of Claims

Concur:
/s/ Maurice Perkin C. J.
/s/ S. J. (Illegible) J.

I. E. A., et al. v. State
No. 6891

APPENDIX C.

PERTINENT CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.

1. The Fourteenth Amendment of the Constitution of the United States reads:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any State deprive of any person of life liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

2. Article I, Section 12 of the Constitution of the State of Illinois reads:

> "Every person shall find a certain remedy in the laws for all injuries and wrongs which he receives to his person, privacy, property or reputation. He shall obtain justice by law freely, completely, and promptly."

3. Article VI, Section 4(a) of the Constitution of the State of Illinois reads:

> "The Supreme Court may exercise original jurisdiction in cases relating to revenue, mandamus, prohibition or habeas corpus and as may be necessary to the complete determination of any case on review."

4. Article XIII, Section 5 of the Constitution of the State of Illinois reads:

> "Membership in any pension or retirement system of the State, any unit of local government or school district, or any agency or instrumentality thereof, shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired."

5. Illinois Revised Statutes, Chapter 37, Section 439.8 (Court of Claims Act) reads:

"The court shall have exclusive jurisdiction to hear and determine the following matters:

(a) All claims against the State founded upon any law of the State of Illinois, or upon any regulation thereunder by an executive or administrative officer or agency, other than claims arising under the Workmen's Compensation Act or the Workmen's Occupational Diseases Act."

(b) All claims against the State founded upon any contract entered into with the State of Illinois."

6. Illinois Revised Statutes, Chapter 108½, Section 15-155 (State Universities Retirement System) reads:

The State of Illinois shall make contributions by biennial appropriations of the amounts which, together with the other contributions of employers out of trust, federal, and other funds under their control, the contributions of the participating employees, income from investments, and other income of this system, will be necessary to meet the costs of maintaining and administering this System:

(1) the total amount of the employer contribution for any fiscal year shall be the sum of the amounts estimated to be required, on the basis of the actuarial tables adopted by the board and the prescribed rate of interest to meet the disability benefits, additional death benefits, the employers' portion of the cost of all annuities and survivors insurance benefits and expenses of administration expected to be paid during the year and to result in the accumulation of assets at the end of the year equal to the sum of the following:

(a) the liability for all annuities expected to be paid to the then annuitants, and the survivors insurance benefits expected to be paid;

(b) the liability for all accumulated additional, normal, and survivors insurance contributions of the then participants;

(c) the single premium reserve required for the employers' portion of the cost of all annuities which have then accrued because of previous earnings of the then participants;

(d) additional reserves which may reasonably be required because of variations in mortality, interest, and turnover experience.

In determining the employer contributions, the board shall include the amount which is required to amortize the cost of acquisition of land and the construction of an office building thereon over a period not exceeding 30 years, including interest at the rate of 6% per annum, less the estimated amount of rentals which may be received from the lease of surplus space in the building.

The contributions of employers from State appropriations for any fiscal year shall not be less than an amount which is required to fund fully the current service costs in accordance with actuarial reserve requirements as prescribed in paragraph (1) of this Section, plus interest at the prescribed rate on the unfunded accrued liabilities.

If an employee is paid from trust or federal funds, the employer shall pay to the board contributions from these funds which are required to fund fully the current service costs in accordance with the actuarial reserve requirements as prescribed in paragraph (1) of this Section. Funds of the alumni associations, foundations, and athletic associations which are affiliated with the universities included as employers under this Article and other employers which do not receive State appropriations are considered as trust funds for the purpose of this Article.

(2) the total employer contribution shall be apportioned among the various funds of the State and other employers, whether trust, federal, or other funds, in accordance with actuarial procedures approved by the Board.

The contributions of the State of Illinois for employers which receive appropriations from the State for personal services shall be payable from appropriations made to the employers. The contributions for Class I junior colleges shall be payable solely from appropriations to the Illinois Junior College Board for employer contributions. Class I junior colleges making employer contributions prior to the effective date of this amendatory Act of 1967 shall be reimbursed by the Illinois Junior College Board upon the filing of a claim for reimbursement in the manner prescribed by the Board. The Auditor of Public Accounts

shall draw warrants payable to the treasurer of the system upon proper certification by the system, by the Illinois Junior College Board or by the employer in accordance with the laws making such appropriation."

7. Illinois Revised Statutes, Chapter 108½, Section 15-156 (State Universities Retirement System) reads:

"The payment of (a) the required State contributions, (b) all benefits granted under this system and (c) all expenses in connection with the administration and operation thereof are obligations of the State of Illinois to the extent specified in this Article."

8. Illinois Revised Statutes, Chapter 108½, Section 16-153 (Teachers' Retirement System) reads:

"The State shall contribute towards Survivors' Benefits an amount equal to that contributed by the members. This contribution shall be made from the common school fund and other state funds to meet the obligations hereunder as certified by the board to the Superintendent of Public Instruction and to the Auditor of Public Accounts in the manner provided in Sections 16-159 and 16-160, and shall be in addition to the amounts prescribed under said Sections."

9. Illinois Revised Statutes, Chapter 108½, Section 16-158 (Teachers' Retirement System) reads:

"The State shall make contributions from the common school fund and other state funds to this system of the amounts required to meet the obligations of the State for the next fiscal year as provided in Sections 16-159 and 16-160. Such amounts shall be no less than 1.2 multiplied by members' contributions and be certified by the board to the Superintendent of Public Instruction and Auditor of Public Accountants."

10. Illinois Revised Statutes, Chapter 108½, Section 16-159 (Teachers' Retirement System) reads:

"Annually at its first regular meeting after June 30, the board shall estimate the amount necessary for the next fiscal year for expenses of administration and for meeting

the other current obligations of the State and a distribution thereof on an actuarial basis between costs applicable to teachers receiving earnings from school districts, and from State funds. Such amount shall be the amount estimated as sufficient to provide the amounts required for expense purposes for the coming fiscal year, and to provide the State costs for retirement allowances and benefits earned by the members during the fiscal year, including regular interest on any State obligation at the beginning of the year for the cost of benefits, retirement allowances and benefits earned in prior years and not previously provided by State contributions."

11. Illinois Revised Statutes, Chapter 108½, Section 16-160 (Teachers' Retirement System) reads:

"Prior to November 30 annually the board shall certify to the Superintendent of Public Instruction the portion of the total amount determined under Section 16-159 and this section to be required during the next fiscal year to maintain this system which is applicable to teachers receiving earnings from school districts or directly from State funds. Annually prior to December 1 next following, the Superintendent of Public Instruction shall direct the Auditor of Public Accounts, in connection with the reports due under Section 18-12 of "The School Code", approved March 18, 1961, as amended, to draw his warrant for the amounts of the required State contribution for such fiscal year. The Auditor of Public Accounts shall draw his warrant for such amounts. Allocations from the common school fund apportioned to school districts not coming under this system shall not be diminished or affected by the provisions of this system."

12. Illinois Revised Statutes, Chapter 108½, Section 16-161 (Teachers' Retirement System) reads:

"On the basis of such tables as the board adopts, the actuary shall make an annual valuation of the assets and liabilities of the system and an annual determination of the State costs and obligations for the system. On such information, the board shall certify to the Superintendent of Public Instruction, the amounts of contributions payable by the State for the year."

13. Illinois Revised Statutes, Chapter 108½, Section 16-187 (Teachers' Retirement System) reads:

"The State Treasurer is ex officio custodian of the fund of the retirement system. He shall credit all moneys received under this Article to the proper reserves. He shall make payments from the fund for the purposes herein specified upon warrants of the Auditor of Public Accounts. He shall be liable on his official bond for the proper performance of his duties and be held accountable for all cash in his custody, and for the safekeeping of all securities belonging to the retirement system. He shall collect all principal and interest as they become due and payable and place them into the retirement fund. He shall keep his books and accounts in the manner prescribed by the board, and they shall always be subject to the inspection of the board or any member thereof. He shall furnish the board, annually, with a sworn statement showing in detail the financial standing of the fund and securities of the system in his custody as of June 30.

The Auditor of Public Accounts may draw warrants payable from the fund upon the State Treasurer for the purposes herein provided upon the presentation of vouchers approved by the president and the secretary of the board. The board shall file with the Auditor an attested copy of a resolution designating such persons as his authority for drawing warrants upon such vouchers. No voucher shall be drawn unless it has previously been authorized by resolution of the board."